



General Assembly

February Session, 2010

Raised Bill No. 306

LCO No. 1670

01670_____PRI

Referred to Committee on Program Review and Investigations

Introduced by:
(PRI)

***AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE
PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
CONCERNING WHISTLEBLOWERS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2010*) The General Assembly
2 finds and declares that it is in the vital interest of the people of this
3 state that their government operate in accordance with the law and
4 without fraud, waste or mismanagement. To that end, the purpose of
5 section 4-61dd of the general statutes, as amended by this act, is to
6 create a climate where conscientious service is encouraged and
7 disclosures of illegalities and improprieties may be made without
8 reprisal or fear of retaliation.

9 Sec. 2. Section 4-61dd of the 2010 supplement to the general statutes
10 is repealed and the following is substituted in lieu thereof (*Effective*
11 *October 1, 2010*):

12 (a) Any person having knowledge of any matter involving
13 corruption, unethical practices, violation of state laws or regulations,
14 mismanagement, gross waste of funds, abuse of authority or danger to

15 the public safety occurring in any state department or agency or any
 16 quasi-public agency, as defined in section 1-120, or any person having
 17 knowledge of any matter involving corruption, violation of state or
 18 federal laws or regulations, gross waste of funds, abuse of authority or
 19 danger to the public safety occurring in any large state contract, may
 20 transmit all facts and information in such person's possession
 21 concerning such matter to the Auditors of Public Accounts. [The
 22 Auditors of Public Accounts shall review such matter and report their
 23 findings and any recommendations to the Attorney General. Upon
 24 receiving such a report, the Attorney General shall make such
 25 investigation as the Attorney General deems proper regarding such
 26 report and any other information that may be reasonably derived from
 27 such report. Prior to conducting an investigation of any information
 28 that may be reasonably derived from such report, the Attorney
 29 General shall consult with the Auditors of Public Accounts concerning
 30 the relationship of such additional information to the report that has
 31 been issued pursuant to this subsection. Any such subsequent
 32 investigation deemed appropriate by the Attorney General shall only
 33 be conducted with the concurrence and assistance of the Auditors of
 34 Public Accounts. At the request of the Attorney General or on their
 35 own initiative, the auditors shall assist in the investigation.] The
 36 Auditors of Public Accounts or Attorney General shall investigate such
 37 matter.

38 (b) The Auditors of Public Accounts and the Attorney General shall
 39 enter into a memorandum of understanding in order to develop a
 40 system for managing complaints received pursuant to subsection (a) of
 41 this section jointly and the assignment of such complaints
 42 appropriately. The Auditors of Public Accounts and the Attorney
 43 General may reject any such complaint if either the Auditors of Public
 44 Accounts or the Attorney General determines one or more of the
 45 following:

46 (1) There are other available remedies that the complainant can
 47 reasonably be expected to pursue;

48 (2) The matter complained of is better suited for investigation or
49 enforcement by another state agency;

50 (3) The complaint is trivial, frivolous, vexatious or not made in good
51 faith;

52 (4) Other complaints have greater priority in terms of serving the
53 public good;

54 (5) Investigation into the complaint would require resources that
55 either the Auditors of Public Accounts or the Attorney General lack; or

56 (6) The complaint is not timely or too long delayed to justify further
57 investigation.

58 (c) If at any time the Auditors of Public Accounts or the Attorney
59 General determines that a complaint is more appropriately
60 investigated by another state agency, they shall refer the complaint to
61 such agency. The Attorney General [shall have power to] may
62 summon witnesses, require the production of any necessary books,
63 papers or other documents and administer oaths to witnesses, where
64 necessary, for the purpose of an investigation pursuant to this section
65 or for the purpose of investigating a suspected violation of subsection
66 (a) of section 17b-301b until such time as the Attorney General files a
67 civil action pursuant to section 17b-301c. Upon the conclusion of the
68 investigation, the Attorney General shall where necessary, report any
69 findings to the Governor, or in matters involving criminal activity, to
70 the Chief State's Attorney. In addition to the exempt records provision
71 of section 1-210, the Auditors of Public Accounts and the Attorney
72 General shall not, after receipt of any information from a person under
73 the provisions of this section or sections 17b-301c to 17b-301g,
74 inclusive, disclose the identity of such person without such person's
75 consent unless the Auditors of Public Accounts or the Attorney
76 General determines that such disclosure is unavoidable, and may
77 withhold records of such investigation, during the pendency of the
78 investigation. Upon the request of the person who makes a complaint

79 in accordance with subsection (a) of this section, the Auditors of Public
 80 Accounts or the Attorney General shall inform such person of the
 81 outcome of the investigation of such complaint. If, at the conclusion of
 82 an investigation, the Auditors of Public Accounts or the Attorney
 83 General find such matter to be substantiated and require corrective
 84 action on the part of the state agency, quasi-public agency or large
 85 state contractor, the Auditors of Public Accounts and the Attorney
 86 General, not later than a year after requiring such action, shall
 87 determine whether such corrective action has been taken. If they
 88 determine that the state agency, quasi-public agency or large state
 89 contractor has not taken such corrective action, they shall report such
 90 noncompliance to the Governor.

91 ~~[(b)]~~ (d) (1) No state officer or employee, as defined in section 4-141,
 92 no quasi-public agency officer or employee, no officer or employee of a
 93 large state contractor and no appointing authority shall take or
 94 threaten to take any personnel action against any state or quasi-public
 95 agency employee or any employee of a large state contractor in
 96 retaliation for such employee's or contractor's disclosure of
 97 information to (A) an employee of the Auditors of Public Accounts or
 98 the Attorney General under the provisions of subsection (a) of this
 99 section; (B) an employee of the state agency or quasi-public agency
 100 where such state officer or employee is employed; (C) an employee of
 101 a state agency pursuant to a mandated reporter statute or pursuant to
 102 subsection (b) of section 17a-28; or (D) in the case of a large state
 103 contractor, an employee of the contracting state agency concerning
 104 information involving the large state contract.

105 (2) If a state or quasi-public agency employee or an employee of a
 106 large state contractor alleges that a personnel action has been
 107 threatened or taken in violation of subdivision (1) of this subsection,
 108 the employee may notify the Attorney General, who shall investigate
 109 pursuant to subsection ~~[(a)]~~ (c) of this section.

110 (3) (A) Not later than thirty days after learning of the specific

111 incident giving rise to a claim that a personnel action has been
112 threatened or has occurred in violation of subdivision (1) of this
113 subsection, a state or quasi-public agency employee, an employee of a
114 large state contractor or the employee's attorney may file a complaint
115 concerning such personnel action with the Chief Human Rights
116 Referee designated under section 46a-57. The Chief Human Rights
117 Referee shall assign the complaint to a human rights referee appointed
118 under section 46a-57, who shall conduct a hearing and issue a decision
119 concerning whether the officer or employee taking or threatening to
120 take the personnel action violated any provision of this section. If the
121 human rights referee finds such a violation, the referee may award the
122 aggrieved employee reinstatement to the employee's former position,
123 back pay and reestablishment of any employee benefits for which the
124 employee would otherwise have been eligible if such violation had not
125 occurred, reasonable attorneys' fees, and any other damages. For the
126 purposes of this subsection, such human rights referee shall act as an
127 independent hearing officer. The decision of a human rights referee
128 under this subsection may be appealed by any person who was a party
129 at such hearing, in accordance with the provisions of section 4-183.

130 (B) The Chief Human Rights Referee shall adopt regulations, in
131 accordance with the provisions of chapter 54, establishing the
132 procedure for filing complaints and noticing and conducting hearings
133 under subparagraph (A) of this subdivision.

134 (4) As an alternative to the provisions of subdivisions (2) and (3) of
135 this subsection: (A) A state or quasi-public agency employee who
136 alleges that a personnel action has been threatened or taken may file an
137 appeal not later than thirty days after learning of the specific incident
138 giving rise to such claim with the Employees' Review Board under
139 section 5-202, or, in the case of a state or quasi-public agency employee
140 covered by a collective bargaining contract, in accordance with the
141 procedure provided by such contract; or (B) an employee of a large
142 state contractor alleging that such action has been threatened or taken
143 may, after exhausting all available administrative remedies, bring a

144 civil action in accordance with the provisions of subsection (c) of
145 section 31-51m.

146 (5) In any proceeding under subdivision (2), (3) or (4) of this
147 subsection concerning a personnel action taken or threatened against
148 any state or quasi-public agency employee or any employee of a large
149 state contractor, which personnel action occurs not later than one year
150 after the employee first transmits facts and information concerning a
151 matter under subsection (a) of this section to the Auditors of Public
152 Accounts or the Attorney General, there shall be a rebuttable
153 presumption that the personnel action is in retaliation for the action
154 taken by the employee under subsection (a) of this section.

155 (6) If a state officer or employee, as defined in section 4-141, a quasi-
156 public agency officer or employee, an officer or employee of a large
157 state contractor or an appointing authority takes or threatens to take
158 any action to impede, fail to renew or cancel a contract between a state
159 agency and a large state contractor, or between a large state contractor
160 and its subcontractor, in retaliation for the disclosure of information
161 pursuant to subsection (a) of this section to any agency listed in
162 subdivision (1) of this subsection, such affected agency, contractor or
163 subcontractor may, not later than ninety days after learning of such
164 action, threat or failure to renew, bring a civil action in the superior
165 court for the judicial district of Hartford to recover damages, attorney's
166 fees and costs.

167 ~~[(c)]~~ (e) Any employee of a state or quasi-public agency or large
168 state contractor, who is found to have knowingly and maliciously
169 made false charges under subsection (a) of this section, shall be subject
170 to disciplinary action by such employee's appointing authority up to
171 and including dismissal. In the case of a state or quasi-public agency
172 employee, such action shall be subject to appeal to the Employees'
173 Review Board in accordance with section 5-202, or in the case of state
174 or quasi-public agency employees included in collective bargaining
175 contracts, the procedure provided by such contracts.

176 [(d)] (f) On or before September first, annually, the Auditors of
177 Public Accounts shall submit to the clerk of each house of the General
178 Assembly a report indicating the number of matters for which facts
179 and information were transmitted to the auditors pursuant to this
180 section during the preceding state fiscal year and the disposition of
181 each such matter.

182 [(e)] (g) Each contract between a state or quasi-public agency and a
183 large state contractor shall provide that, if an officer, employee or
184 appointing authority of a large state contractor takes or threatens to
185 take any personnel action against any employee of the contractor in
186 retaliation for such employee's disclosure of information to any
187 employee of the contracting state or quasi-public agency or the
188 Auditors of Public Accounts or the Attorney General under the
189 provisions of subsection (a) of this section, the contractor shall be liable
190 for a civil penalty of not more than five thousand dollars for each
191 offense, up to a maximum of twenty per cent of the value of the
192 contract. Each violation shall be a separate and distinct offense and in
193 the case of a continuing violation each calendar day's continuance of
194 the violation shall be deemed to be a separate and distinct offense. The
195 executive head of the state or quasi-public agency may request the
196 Attorney General to bring a civil action in the superior court for the
197 judicial district of Hartford to seek imposition and recovery of such
198 civil penalty.

199 [(f)] (h) Each large state contractor shall post a notice of the
200 provisions of this section relating to large state contractors in a
201 conspicuous place which is readily available for viewing by the
202 employees of the contractor.

203 [(g)] (i) No person who, in good faith, discloses information to the
204 Auditors of Public Accounts or the Attorney General in accordance
205 with this section shall be liable for any civil damages resulting from
206 such good faith disclosure.

207 [(h)] (j) As used in this section:

208 (1) "Large state contract" means a contract between an entity and a
209 state or quasi-public agency, having a value of five million dollars or
210 more; and

211 (2) "Large state contractor" means an entity that has entered into a
212 large state contract with a state or quasi-public agency.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	New section
Sec. 2	<i>October 1, 2010</i>	4-61dd

Statement of Purpose:

To implement the recommendations of the Program Review and Investigations Committee concerning whistleblowers, including to add a policy statement, to require the Attorney General and Auditors of Public Accounts to enter into a memorandum of understanding to handle complaints jointly, to allow them to reject complaints in certain circumstances and to refer complaints to other agencies, to require them to monitor the outcome of the complaint and to permit the complainant to be informed of the outcome.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]